IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

MFA.No. 503 of 2002(A)

O.P(MV).NO.835/1997 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, VADAKARA.
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APPELLANT:
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1. **AYISHA, W/O.MAJEED, KUTHIRODI HOUSE, ANGA PEEDIKAYIL, VANMUKAM AMSOM, KADALOOR POST, KOYILANDY.**

2. **ASDIL (MINOR) AGED 5 YEARS, REP.BY NEXT FRIEND, MOTHER AYISHA, W/O.MAJEED, KUTHIRODI HOUSE, ANGA PEEDIKAYIL, VANMUKAM AMSOM, KADALOOR POST, KOYILANDY.**

3. **MOIDU, AGED 56 YEARS, S/O.MUHAMMED, KUTHIRODI HOUSE, ANGA PEEDIKAYIL, VANMUKAM AMSOM, KADALOOR POST, KOYILANDY.**

4. **ACHUMMA, AGED 51 YEARS, W/O. MOIDU, KUTHIRODI HOUSE, ANGA PEEDIKAYIL, VANMUKAM AMSOM, KADALOOR POST, KOYILANDY.**

BY ADV. SMT.K.V.RESHMI

RESPONDENTS:
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1. **MR.VIKAS BABU K., RASITHA NIVAS, POST TELLICHERRY, KANNUR (OWNER OF THE KRN-2910 MATADOOR VAN).**

2. **MR.SHAJI, S/O.RAGHAVAN, VAZHAKKALIL HOUSE, POST EDAKKAD, KANNUR DISTRICT. (DL NO.1671/89-DRIVER OF THE KRN-2910 MATADOOR VAN**

M.F.A. NO. 503/2002:

3. M/S.NATIONAL INSURANCE COMPANY LTD.,
P.B.NO.40, BANK ROAD, KANNUR.

4. V.R.DILSHADH, S/O.C.P.MAMMU,
RAROTH HOUSE, MANANTHALA PALAM FRANCIS ROAD,
CALICUT (DL.NO.3439/92, DB. OWNER-CUM-DRIVER OF
MOTOR CYCLE KL 11/D 702).

5. M/S.NATIONAL INSURANCE COMPANY LTD.,
P.B.NO.11, NOOR COMPLEX, MAVOOR ROAD, CALICUT.

R2 BY ADV. SRI.A.MOHAMED MUSTAQUE,
ADV. SRI.M.K.SUMOD,
R3 & R5 BY SRI.LAL GEORGE.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 03/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.T.SANKARAN, JJ.

M.F.A.NO.503 OF 2002 (A)

Dated this the 3rd day of December, 2007

J U D G M E N T

KOSHY,J.

Husband of the 1st appellant succumbed to fatal injuries in a motor accident on 5.10.1997. An amount of Rs.12,00,000/- was claimed as compensation, alleging that accident occurred due to the negligence of the 2nd respondent driver of the vehicle insured by the 3rd respondent Insurance company. Accident occurred when a Matador Van driven by the 2nd respondent collided with a motor cycle ridden by the 4th respondent and both vehicles are insured by the same Insurance company. However, against a claim of Rs.12,00,000/- compensation awarded was only Rs.4,63,500/-. Only quantum of compensation is disputed in this appeal.

2. At the time of accident, he was employed in Quatar. Ext.A4 is the passport which shows that accident occurred

when he came on leave. Ext.A5 is the health card of the deceased. Ext.A6 is the identity card of the deceased in foreign country. Ext.A8 is the driving licence of the deceased. Ext.A10 is the translated copy of the passport. Ext.A9 certificate shows that he was getting an amount of Rs.3,000/- Quatar riyals per month and in Indian rupees, it was Rs.30,000/-. Even though it is stated that exchange rate at the time of accident was Rs.13.05. Supreme Court in ***United Insurance Co. Ltd. v. Patricia Jean Mahajan and others (JT 2002 (5) SC 74)*** held that while calculating compensation for employees in foreign countries, exchange rate as available on the date of accident should be taken into account. If that be so, Rs.30,000/- was his monthly income. It was argued by the counsel for the Insurance company that compensation has to be calculated in Indian currency. It is held by the Apex Court reported that what compensation that is to be kept in mind is the financial loss suffered by the claimant due to death or injury of the accused victim. It was also argued that there is no guarantee for employment of employees in Gulf countries than in India. But taking all aspects of the case, we fix only

Rs.6,000/- as the monthly income. In ***Smt. Supe Dei and others v. M/s.National Insurane Co. Ltd. And another (JT 2002 (Suppl.1) SC 451)***, a three member bench held that for calculating compensation under Section 166 also, multiplier fixed under Section 163 A in the 2nd Schedule should be taken as a guideline. In ***A.P.S.R.T.C. v. M.Pentaiah Charg (2007 AIR SCW 5689)***, Supreme Court held that 2nd Schedule should be taken into account except in exceptional cases. Even though he was earning more than Rs.30,000/- per month at the time of accident, we have taken a very low multiplicant and therefore there are exceptional circumstances in not taking multiplier in the 2nd Schedule. But the claimants contention that a higher multiplier should be taken cannot be accepted. It is true that his wife was only 19 years at the time of accident and son was only one year old. He was also maintaining his aged parents. If Rs.6,000/- is taken as the monthly income, Rs.4,000/- can be taken as the family contribution which is very low considering the family dependency that is expected from an employed person in Gulf countries. If Rs.4,000/- is taken, additional compensation for dependency will be Rs.4,32,000/-.

It was contended that compensation granted for consortium and other heads are very low but considering the total amount granted, no further enhancement is required on other heads. The above amount of Rs.4,32,000/- should be deposited by the 3rd respondent Insurance company with 7% interest from the date of the application till its deposit over and above the decreed amount by the tribunal and on deposit of the amount, Rs.1,00,000/- is allowed to be withdrawn by the 1st appellant and Rs.50,000/- each should be allowed to be withdrawn by 3rd and 4th respondents and balance should be deposited in the name of the son, 2nd appellant and he is allowed to withdraw the same when he attains the age of 21. With the above observations this appeal is allowed.

J.B.KOSHY, JUDGE

K.T.SANKARAN, JUDGE

prp

J.B.KOSHY & K.T.SANKARAN, JJ.

M.F.A.NO.503 OF 2002 ()

J U D G M E N T

3rd December, 2007